

1 HONORABLE RONALD B. LEIGHTON  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT TACOMA

10 JOSEPH REPAR,

11 Plaintiff,

12 v.

13 CENTRAL KITSAP FIRE & RESCUE,

Defendant.

CASE NO. C15-5269 RBL

ORDER DENYING JUDGMENT ON  
THE PLEADINGS

DKT. #22

14 THIS MATTER comes before the Court on Plaintiff Joseph Repar's Motion for

15 Judgment on the Pleadings. [Dkt. #22]. Repar claims his former employer, Defendant Central  
16 Kitsap Fire and Rescue, failed to properly pay him hourly and overtime wages. Repar asks the  
17 Court to decide on the pleadings whether a collective bargaining agreement (CBA) between

18 CKFR and the firefighters union authorized CKFR to pay him different overtime rates,

19 depending on his position. CKFR argues that because it has raised affirmative defenses and

20 because there are material disputes of fact, Repar's Motion should be denied.

21 Judgment on the pleadings is proper when there are no issues of material fact, and the  
22 moving party is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 12(c). The non-  
23 moving party's factual allegations are accepted as true and construed in the light most favorable

1 to that party. *See McGlinch v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988). A  
2 plaintiff is not entitled to a judgment when the answer raises issues of fact that, if proved, would  
3 defeat recovery. Similarly, an affirmative defense will usually bar judgment on the pleadings.  
4 *See Gen. Conf. Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational*  
5 *Church*, 887 F.2d 228, 230 (9th Cir. 1989).

6 CKFR's affirmative defenses are that Repar failed to exhaust the CBA's grievance  
7 procedures, and that the six-month limitations period for breach of the CBA bars some or all of  
8 his claims. [Dkt. #21, pg. 4]. It also points to disputes of material fact affecting Repar's right to  
9 recovery: whether a "memorandum of understanding" between it and the union had expired, and  
10 what position(s) Repar actually held. [Dkt. #21, pg. 2-3]. For these reasons, Repar's Motion for  
11 Judgment on the Pleadings [Dkt. #22] is DENIED.

12 IT IS SO ORDERED.

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14 Dated this 22<sup>nd</sup> day of January, 2016.

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Ronald B. Leighton

17 Ronald B. Leighton  
18 United States District Judge  
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